

IN THE MATTER OF

Stephen G. Kaffl

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 07-021N

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DECISION AND ORDER

On November 19, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Stephen G. Kaffl, for the confirmation and enlargement of a nonconforming use for a motor vehicle repair facility located in a POR (Planned Office Research) Zoning District, filed pursuant to Section 129 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. Stephen G. Kaffl and Andrew Porter appeared in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 6374 Ten Oaks Road, is located in the 5th Election District approximately 350 feet west of MD 108 in Clarksville (the "Property"). The Property is identified on Tax Map 34, Grid 12, as Parcel 32.

2. The Property is a slightly irregular wedge-shaped parcel consisting of about 29,228 square feet (0.67 acres). The lot has 89.95 feet of frontage on Ten Oaks Road and widens to 150.15 feet at the southern, rear property line. The Property is about 238 deep along its west lot line and about 263 feet deep on its east lot line.

3. In the Property's front is a paved parking area. Just to the parking area's south are two buildings. Building A, the largest, is a 1½ story, 481± square foot office and garage situated close to the eastern lot line. To its west is the one-story, 478 square foot Building B. South of Building B is Building C, a small, one-story, 400 square foot frame building. Behind Building A is Building D, a small, one bay, 280 square foot frame garage with a concrete pad to its west. The area behind Buildings A, B, and C form a paved courtyard which connects to a paved private road off Ten Oaks Road and running along the west lot line. This road provides access to a religious facility and school property adjoining the Property's south lot line. South of the paving and buildings, the Property is covered with stone and a small concrete pad. A narrow lawn covers the Property's southernmost section.

4. The Property is the site of an automotive repair facility known as Clarksville Auto Center. Before being rezoned POR on April 13, 2004, the Property was zoned B-2, in which district an automotive repair business was a permitted use. The B-2 zone was applied through the 1961 Comprehensive Zoning Plan. The Petitioner presented several licenses, hazardous waste manifests, and other documents from the business indicating that automobile repair was conducted on the Property on a regular basis between April 1992 and May 1995 and from February 2004 to May 2007. In addition, the Department of Planning and Zoning ("DPZ") Technical Staff Report ("TSR") states the 1999 and current Land Use Map identifies the

Property as a motor vehicle sales repair and services use, a specific land use code. Additionally, 1998 and 2001 TSRs reference a commercial use on the Property in relation to proposals on two adjoining properties. DPZ aerial photographs of the Property taken before 2001 show the development. Attached to the petition is a 1995 building permit for what is probably Building B.

5. Mr. Kaffl testified the Property has been used as a motor vehicle repair facility and body shop since 1987, that he bought the auto body shop in 1989, and purchased the Property in 2002. He explained the front section of Building A was closed off when the business opened a new customer service center at a second location and that the front office area has been used continuously since then as a lunch area and for parts storage. The back section has been used continuously for car work.

6. Mr. Andrew Porter, a civil engineer, testified the proposed enlargement area calculation comprises 70.79 percent of the 3,814 square floor area existing at the time the Repair Use became nonconforming, and not 53 percent, as set forth in Note 9 of the nonconforming use plan.

7. The Petitioner requests confirmation of a nonconforming use for a vehicle repair facility on the Property, including the existing four buildings used for full body motor vehicle repairs. In addition, the Petitioner seeks approval of the enlargement of the nonconforming use through the construction of Building E, a one-story, 2,700 square foot (45' by 60') auto body repair facility. The proposed building would adjoin Building A to the south. Building D and its concrete slab would be demolished, as would Building C. Building E will become the body shop and Building A will be used for paint preparation.

8. Vicinal properties across Ten Oaks Road to the north include a B-1 zoned lot improved

MICHELE L. LEFAIVRE
LAW OFFICE OF MICHELE L. LEFAIVRE, ESQ.
435 ROSEBANK AVENUE
BALTIMORE, MARYLAND 21212

INVOICE

Payee: Michele L. LeFaivre

Invoice #: 1198
Invoice Date: December 10, 2007
Due Date: December 10, 2007
Case:
P.O. Number:

Description	Hours/Qty	Rate	Amount
BA 07-021N			
Decision and Order for the confirmation and expansion of a nonconforming use from a November 19, 2007 hearing		550.00	550.00
Stephen G. Kaffl 6374 Ten Oaks Road			
Total			550.00
Payments/Credits			
Balance Due			550.00

with a two-story frame commercial use building and a B-2 zoned shopping center. To the east, B-2 zoned Parcel 93 is improved with a bank. The RR-DEO zoned Parcel 196 to the south is the site of a large religious facility and school. Across the private road is the POR zoned Parcel 30, which is improved by a single-family detached dwelling currently used as a contractor's office and storage yard under Temporary Use approval.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. Confirmation of Nonconforming Uses (Section 129.D)

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, either on the effective date of those regulations or as a result of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the time of the zoning change and has continued uninterrupted since that date.

In this case, the Petitioner has presented uncontroverted evidence in the form of documentation that the Property has been used as a vehicle repair facility since at least April 13, 2004, the date of the 2004 comprehensive zoning plan which rezoned the Property from its B-2 zoning designation to POR, and that such use has continued uninterrupted since that date. Consequently, I conclude the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with Section 129.D.

II. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)

1. The Petitioner proposes to construct a 45 foot by 60 foot, auto body repair facility addition to the south side of Building A and requests approval of this enlargement of the

nonconforming use. The enlargement would replace Building D and its concrete slab, which will be removed, as would Building C. Building A will be used for paint preparation work and Building E will be used as a body shop. I therefore conclude the proposed addition will not change the use in any substantial way, in accordance with Section 129.E.1.a.

2. The 2,700 square foot addition is 70.79 percent of the 3,814 gross square floor area of Buildings A, B, C, and D, which is less than the maximum increase of 100% of the gross floor area allowed by Section 129.E.1.b.

3. The outdoor land area occupied by the nonconforming use will not be enlarged in compliance with Section 129.E.1.c.

4. The addition will be located to the rear of Building A. While the addition is placed near the lot line, the lot line setback from the adjoining B-2 zoned property is zero feet. Consequently, the enlargement complies with Section 129.E.1.d. The addition will be used as a body shop and will not generate excessive noise, odors, or other adverse affects. The use will not increase traffic to or on the Property or otherwise increase the intensity of the use of the Property. Consequently, the garage addition will not cause adverse effect on vicinal properties in accordance with Section 129.E.1.e.

ORDER

Based upon the foregoing, it is this 7th day of December 2007, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Stephen G. Kaffl for the confirmation and enlargement of a nonconforming use for a vehicle repair and bodywork facility located in a POR (Planned Office Research) zoning district is hereby **GRANTED**;

Provided, however, that the nonconforming use and enlargement will apply only to the land area, uses, and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

Michele G. Fenne

Date Mailed: 12/12/07

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

